

## A Piecemeal Approach

# The State's Tendency to Take from the Municipal Tax Pie



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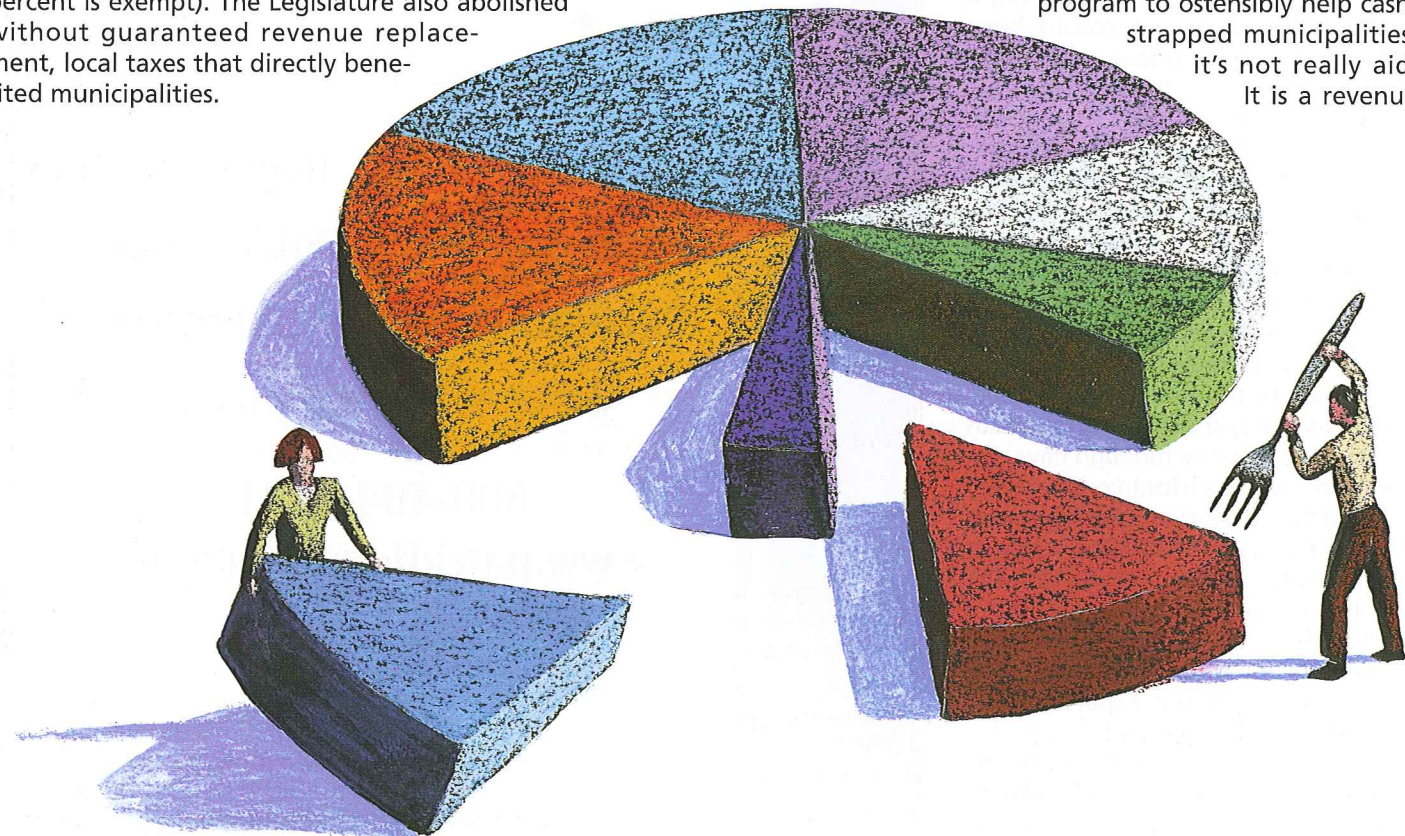
It is often said that municipalities are creatures of the state: made by the state, destroyed by the state and at times treated unkindly by the state, all through legislative action.

From the earliest time, the state has allowed municipalities to levy taxes on real estate and certain personal property. These were taxes, locally assessed and collected for the support of municipal and county governments and local school districts. Originally these taxes were intended to support only local government services, not those of the state. But, now a large part supports functions that the state has imposed on local units.

This would not be so bad if the local tax base were allowed to expand at a natural rate. But, this has not been the case. Year after year the Legislature has eviscerated the local tax base through exemptions. (Of real property, 14 percent is exempt). The Legislature also abolished without guaranteed revenue replacement, local taxes that directly benefited municipalities.

One example is the Public Utility Gross Receipts Tax. That was a tax on regulated public utilities originally assessed and collected at the municipal level. Legislation, urged on by the utilities, made the state the collection agent with the promise that the proceeds would be distributed back to the municipalities. It never happened. The proceeds, large and growing, were diverted into the state's general fund. An amendment to the legislation replaced the promise with a so called "poison pill" provision, which required the state to annually increase the municipal distribution of the tax proceeds. Failure to honor that pledge was to result in the forfeiture of the state's authority to collect the tax. But, through fiscal maneuvering, the state never swallowed the pill and municipalities received not one dollar of revenue replacement.

Even when the Legislature establishes a state aid program to ostensibly help cash-strapped municipalities, it's not really aid. It is a revenue



replacement program for dollars, formerly generated through taxes assessed and collected locally, which were taken away by the state.

Once a dedicated tax is taken away from local control, barring a constitutional mandate for revenue replacement funding, history shows us there is little likelihood of any fair guaranteed return from the state.

This is the essence of the legislation proposed by Verizon. It would remove two dedicated revenue sources from local control, the Business Personal Property Tax and CATV franchise fees and replace them with a sales tax—with no guarantee that revenue for municipalities would be restored.

In effect, the legislation removes a tax or fee burden from for-profit companies and their shareholders, and places the full revenue-producing burden on the users of their services; at the same time, it would allow those for-profits to benefit from the free use of the public rights of way.

The public rights-of-way are valuable assets held in trust for the people of the state by local governments. Clearly, taxpayers are entitled to compensation when private corporations use the public rights-of-way to generate profits.

Public rights-of-way are essential to the health, safety, transportation, communications and economic development of a community. They accommodate pedestrian and vehicular traffic, shade trees and plantings, traffic signals and signs, street lights, electric wire, telephone, cable television, sanitary sewers, storm sewers, water mains, gas lines and pipelines. Management of municipal rights-of-way is therefore a process of balancing essential and competing demands on the same property. To protect the health and safety of our communities, as well as to protect the existing facilities of local government and other rights-of-way users, municipal governments must have the ability to ensure the efficient use of municipal rights-of-way. Local governments must have the ability to levy fees to recover costs and receive fees and reasonable compensation for the use of those municipal rights-of-way by telecommunications and cable television companies.

The increased pressure on public rights of way by the telecommunications industry imposes increased costs

on municipal government by shortening street life, increasing road maintenance cost, increasing traffic disruption and increasing management costs. Municipalities should be able to recover all the direct costs associated with having utilities encumber their rights-of-way. And municipalities should receive fair and reasonable compensation above these direct costs for the use of these public assets by private, for-profit companies. Otherwise, the local property taxpayers are subsidizing the for-profits and their shareholders.

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Verizon's stated premise for the immediate need for this legislation is its concern about the loss of revenue to municipalities. This is based on its position that it will no longer have to pay the Business Personal Property Tax when it ceases to provide dial tone and access to at least 51 percent of a local exchange in a community. This position has been found to be spurious by the nonpartisan Office of Legislative Services, my firm and now the attorneys for Hopewell Borough who are litigating the issue in Tax Court. The League is in the process of filing a Motion to Intervene as *amicus*.

In giving rise to the litigation, Verizon unilaterally determined that it was no longer required to pay the tax. Verizon refused to submit the form used by the tax assessor to calculate the amount to be paid, for tax year

2009. The borough then calculated the tax owed based on the assessed value of Verizon's personal property the previous year and demanded payment. Verizon filed an appeal in Tax Court. Hopewell filed a Counterclaim, seeking a declaratory judgment interpreting the Law, and demanding an increase of the assessment to its true value. Thus, Verizon's rights, obligations and liabilities to the 526 municipalities it serves will be affected by the Hopewell litigation.

Verizon also speaks to the decline in revenue from the Business Personal Property Tax, which is calculated solely upon a valuation provided by Verizon and which has been left untested by local assessors until now. One assessor, Mitchell Elias from Monroe Township in Middlesex County—and there may be more—has recently requested Verizon to provide him with a detailed list of its tangible property, where it is located in the township, and the specific method by which values were calculated. In this way—for a change—an independent valuation of the property can be made. Finally, Verizon expresses concern that the state's current tax law does not treat all video service providers equally. However, the proposed "cure" would result in none of them paying a tax and/or fee. That burden would be borne exclusively by the service user.

Equalization of tax burdens among for-profit competitors is not my concern in this article. But, to give free access to municipal rights of way to telecom and CATV in order to tax satellite with an across the board communication sales tax is not the way to go. If satellite has a technological advantage without imposing on municipalities or the public, so be it.

In conclusion, instead of focusing on the parochial and narrow issue of "tax fairness" for those companies that provide video services, the Legislature now has the opportunity to focus and re-examine holistically the state's present unfair tax scheme and fix it so that it is fair to all. Piecemeal tax legislation is not the cure to what ails New Jersey taxpayers. The Legislature must take into account the entire tax scheme before making changes to just one part. And, if the Legislature will not do it, a Constitutional Convention must. Time is running out. ▲